



AZ POST **INTEGRITY BULLETIN** **Volume No. 11**



The Arizona Peace Officer Standards and Training Board (AZPOST) is mandated by the legislature to establish and enforce the physical, mental, and moral fitness standards for all peace officers in the state. The Board meets this charge, to protect the public by overseeing the integrity of Arizona's law enforcement officers, by reviewing cases and taking action against the certification of individuals who violate the AZ POST rules. The following is a summary of the actions taken by the Arizona Peace Officer Standards and Training Board at its **April through July, 2002** public meetings. These actions are not precedent setting, in the sense that similar cases will end with the same result, because each case is considered on its individual facts and circumstances. Having said that, the Board publishes this bulletin to provide insight into the Board's position on various types of officer misconduct. As always, the Compliance Specialist for your agency is available to discuss any matter and to assist you with any questions you might have. The "*Editor Notes*" and the "Frequently Asked Questions" sections are historical observations and insights for training and discussion purposes only.

CASE NO. 1

MISFEASANCE, MALFEASANCE, OR NONFEASANCE

Deputy A forcefully arrested a suspect for selling drugs using completely appropriate force. The suspect later turned up in jail with a ruptured spleen. When initially asked about it, the deputy told his sergeant that he had not hit the suspect. He telephoned his sergeant the following day and stated he had misinformed him, and that he hit the man in order to cause him to stop resisting arrest so he could handcuff him. An internal investigation began. The deputy was truthful throughout both the administrative and criminal investigations. The investigation found that the force Deputy A used was within guidelines, and there was no indication that his strike caused the ruptured spleen. His department fired him, but he was returned to work on appeal. The Board adopted a consent agreement in which he admitted the initial false denial of hitting the man, and admitted that a lie to one's supervisor (even one corrected before an internal investigation) violates the POST rule regarding misfeasance, malfeasance, and nonfeasance, as well as, constituting conduct that may damage public trust in the law enforcement profession. The Board suspended Deputy A's certification for ten months, coinciding with the time he was off work.

CASE NO. 2

UNAUTHORIZED USE OF ACJIS

Officer B used the MDT in his patrol car to access ACJIS and made an unauthorized criminal history records check on a female he was dating. The Board adopted a consent agreement that called for a six-month suspension of his certification.

CASE NO. 3

USE OF MARIJUANA WHILE CERTIFIED

Deputy C had a career with a municipal department and retired in 1993. In 1998, a county appointed him as a reserve deputy. Some time during the last half of that year, he was out of town with his new wife when she produced a marijuana cigarette given to her by a business partner. She smoked it and despite his initial resistance, he joined her in smoking the marijuana. In 2001, Deputy C completed a POST Personal History Form and Application for Certification with another department. He failed to

list the marijuana use on that form. He disclosed the use by written memorandum prior to the polygraph. The deputy stated he was truthful throughout the process, but did not explain whether that meant he had forgotten his marijuana use when he filled out the AZ POST form or what. The Board revoked his certification.

Editor's Note: The Board has never permitted any marijuana use while certified. Revocation has been the result in every case brought to the Board's attention, whether the officer was actively working at the time or not.

CASE NO. 4

LYING DURING AN INTERNAL INVESTIGATION

Officer D called a sergeant and asked him to cover the beginning of her shift for an hour or two because she had a doctor's appointment that she had tried to reschedule, but could not. It turned out that she was attending a court hearing for a friend instead. Circumstances led to an internal investigation and she was advised of the Garrity warnings. A lieutenant informed her that the investigation concerned her request for coverage due to an alleged doctor's appointment, after which she was seen in an inconsistent location. Officer D stated she had called her doctor to reschedule her appointment, but she refused to provide the doctor's full name or telephone number. She also said she told the sergeant she planned to run errands. She told the lieutenant that she did not think what happened was a big deal and refused to answer any more questions. The agency checked out her appointment story and found it to be false. The Board alleged she lied to a supervisor, and again after Garrity, during an official investigation. She requested a hearing and it was held before an independent administrative law judge of the Office of Administrative Hearings, but she did not appear for the hearing. The judge found that she lied to the sergeant and also during the investigation, and concluded that the lies violated AZ POST rules. She did not appear at the Board meeting for final action and the Board revoked her certification.

Editor's Note: This is another situation wherein the actions of the officer probably were not actions that would have resulted in severe discipline, but the initial falsehood, coupled with the subsequent lies, resulted in termination and decertification

CASE NO. 5

DOMESTIC VIOLENCE

Officer E assaulted his wife, leaving a mark on her face. The mark led co-workers of the wife to prompt an investigation. Officer E entered into a consent agreement that permanently relinquished his certification.

Editor's Note: During this time period, there were three other cases of domestic violence that resulted in certification revocation, including one in which the domestic partner's eye socket was fractured by a blow to the face.

CASE NO. 6

LEAVING THE SCENE

Detective F, while off-duty in his personal vehicle and possibly intoxicated, left the scene of a non-injury traffic accident without fulfilling the requirements of A.R.S. §28-662. When questioned he admitted the conduct, resigned from the department and pled guilty to leaving the scene. At no time was he dishonest with criminal or internal investigators, although after the resignation he chose not to cooperate with an internal investigation. The Board suspended his certification for one year for malfeasance in office and conduct that would tend to diminish public trust in the profession.

CASE NO. 7

SEX WITH A MINOR

Deputy G engaged in sexual conduct with a 16-year-old. The 16-year-old was a member of the

department's Explorer Post. The 33-year-old officer used ride-along opportunities to cultivate the relationship. The officer's actions became known when the female became pregnant. The Board revoked his certification.

CASE NO. 8

IMPROPER USE OF POSITION

Reserve Officer H owned and operated a check cashing business. In an attempt to gain information to assist him in his personal business, he contacted an investigator from another city department and told him he was an officer investigating a check forgery. This was not an isolated incident of misrepresenting himself as an officer conducting official business when he was not. The Board revoked his certification.

CASE NO. 9

MISFEASANCE AND IMPROPER CONDUCT

Officer J had a troublesome teenage stepdaughter. On two occasions over a seven-month period, he slapped the girl in the face with an open hand. The girl's mother testified before the Board that she had given him permission to discipline her daughter in this manner. The girl made allegations of assault against Officer J and both criminal and internal investigations were done. He admitted that he slapped the girl, but he was not as forthcoming with admissions about certain acts of intimidation toward his wife and stepdaughter. The Board took into consideration that while his statements created ambiguities, Officer J fully admitted the central issues in the investigations, and that the home situation of Officer J has resolved in the year-and-a-half since his termination. The Board adopted a consent agreement calling for a one-year suspension of Officer J's peace officer certification.

CASE NO. 10

DISHONESTY AND MALFEASANCE

Officer K was off duty at a private party when someone challenged him to wrestle. He handed his department-issued weapon to an 18-year-old female who was unfamiliar with weapons. She accidentally discharged the weapon causing a bullet to enter and exit the walls of an adjoining apartment. Officer K informed the 911 operator that he had heard a gunshot in the area. He met the responding officer and misdirected him by telling him that he had heard a shot and seen a vehicle leaving the area immediately after the shot. Officer K also directed the witnesses to leave, not speak to the police, and disposed of the shell casing. He did not check the welfare of the residents through whose bedroom the bullet traveled. Officer K admitted to obstructing the investigation, citing fear and panic as his rationale. He was charged with two felony counts of tampering with evidence and one misdemeanor count of false reporting. He pled guilty to false reporting and the two felony counts were dismissed. Officer K did not respond to the Complaint before AZ POST, and the Board revoked his peace officer certification.

CASE NO. 11

LYING DURING A CRIMINAL INVESTIGATION

Officer L was with his 20-year-old girlfriend at a party where she was consuming alcohol. He lied to criminal investigators about his knowledge of her drinking. When questioned after Garrity warnings, Officer L admitted he knew she was drinking, but chose not to confront her to avoid an argument. He did not respond to the Complaint alleging dishonesty to investigators and failed to defend himself or offer any mitigation. The Board revoked his certification.

CASE NO. 12

INTOXICATED WHILE ON DUTY

Officer M consumed a large quantity of alcohol on the night before reporting for duty, however, there was a period of sleep before waking for work. He consumed no alcohol between waking and reporting for duty, but he was still under the influence when he went on duty. The agency terminated his employment. The Board adopted a consent agreement calling for a one-year suspension, retroactive to

the date of termination for being under the influence of alcohol on duty.

CASE NO. 13

MALFEASANCE

Deputy N created a bogus speed calibration card and signed another deputy's name under "calibrated by" without permission. He never showed the card to any motorist nor relied upon it in court testimony, however, he did mark the box on the back of thirteen citations to indicate speedometer calibrated, and wrote "card in vehicle." The citations were dismissed after Deputy N admitted fabricating the card. The matter went to a hearing before the Office of Administrative Hearings. An independent administrative law judge (ALJ) found that the conduct violated AZ POST rules concerning misfeasance and conduct that tends to disrupt public trust in the law enforcement profession. However, the ALJ also found the following in mitigation: Deputy N quickly admitted that he fabricated the calibration card when confronted; the training and support provided by the agency may have contributed to the AZ POST rule violations; and no harm was actually done to the agency or profession because of the deputy's sergeant's quick remedial action. The Board adopted the ALJ's Findings of Fact and Conclusions of Law and adopted a stipulated sanction of twenty months' suspension.

CASE NO. 14

FABRICATING STORIES AND IMPROPER CONDUCT

Officer P told numerous stories about occurrences within his agency, and his own experience and positions within that agency that were not true. Many of these stories were at social gatherings or "just among the guys," however, some resulted in Internal Affairs' investigations. One such story was that he had been a member of the agency SWAT team during an entry in which a fellow officer was killed. Officer P was on a multi-agency task force, and he told the SWAT story so many times that he was invited to, and did in fact, conduct a debriefing of the SWAT entry incident for another agency's special operations unit for training purposes. Officer P did not respond to the Complaint or in any way attempt to explain or defend himself before the Board. The Board revoked his peace officer certification.

OTHER ACTIONS

During the months of April, May, June, and July 2002, the POST Board closed numerous cases without initiating disciplinary action against the officer's certification because the rule violations were not seen as severe enough to require Board action. All of these officers have been terminated by, or resigned from, their respective departments and will be required to disclose the circumstances when they apply at any other department in the state for peace officer employment. The conduct in this category included violation of departmental procedures and directives, damaging a dormitory door at an academy, failure to do a complete investigation, failure to take enforcement action on a DUI, an accidental firearms discharge, internet activity, submitting an inaccurate timesheet, failing to secure a duty weapon and having it stolen after inviting intoxicated strangers into the home, and giving incomplete or confused testimony concerning measurements and speed calculations at an accident scene.

There were two automatic revocation actions, one for the felony conviction of an officer for importing marijuana for sale, and one for being convicted of negligent homicide stemming from an on-duty traffic accident.